IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.APPLN.NO.174 OF 2007
(FOR CONDONATION OF DELAY)
WITH
CRI.APPLN.NO.166 OF 2007
(FOR RESTORATION OF REVISION)
WITH
CRI.APPLN.NO.167 OF 2007
(FOR SUBSTITUTED SERVICE)
WITH
CRI.REVN.APPLN.NO.317 OF 2001

M/s.Centurion Bank Ltd. ..Applicant

Vs.

Mr.Sanjeev Dang and Anr. ..Respondents

...

Ms.Deepa Singh i/b Mahesh Menon and Co. for applicant
Mr.Rajesh More A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : JUNE 22, 2007

P.C.

1. Heard.

2. The applicant bank had preferred above Revision Application challenging the judgment and order of acquittal passed in respect of Respondent No.1-original accused by the learned Additional Sessions Judge, Pune in Cri.Appeal No. 131 of 1990. By the said judgment and order, the

Respondents came to be acquitted under Section 138 of the Negotiable Instruments Act.

3. In the Revision, notice came to be issued. However, the notice was received back unserved with the remarks "not residing at given address". Thereafter, conditional order came to be passed against the applicant by order dated 22.6.2006 directing the applicant to give advocate’s notice to Respondent No.1 and file affidavit of service within four weeks, failing which the matter would stand dismissed against unserved Respondent. However, as the address of Respondent No.1 was not known, the applicant could not serve Respondent No.1 and hence, the matter came to be dismissed against Respondent No.1 in view of the order dated 22.6.2006.

4. Cri.Application No.166 of 2007 has been preferred for setting aside the said order of dismissal in respect of Respondent No.1. It is stated that the applicant tried to serve the notice on the Respondent No.1 by way of courier, but the packet was returned back with the remarks "as shifted". As per the directions of the Court, the

applicant had tried diligently to search for the address of Respondent No.1, but despite diligent and sincere efforts, it was not possible to trace the new address of Respondent No.1. Hence, the applicant had filed affidavit in the Revision stating these facts and praying for substituted service. The said affidavit was filed on 20.7.2006. It is stated therein in detail about the circumstances in which the applicant could not serve Respondent No.1 and prayer was made for substituted service. In spite of this affidavit being on record due to the fact that the affidavit of service was not furnished by the applicant, the matter stood automatically dismissed in respect of Respondent No.1 without reference to the Court. Thus, it is prayed that in these circumstances, these applications i.e. (a) application for setting aside the order or dismissal in respect of Respondent No.1 and for restoration of the matter in respect of Respondent No.1, (b) application for condoning the delay caused in filing the above restoration application and (c) application for substituted service, be allowed.

5. In view of the above facts, Cri.Application

Nos.166 of 2007, 167 of 2007 and 174 of 2007 are allowed. Revision is restored to file. The applicant to serve Respondent No.1 by substituted service by way of pasting as well as by publication. The said be done within a period of ten weeks from today.

6. Revision Application stands adjourned to 31st August, 2007.

[SMT.V.K.TAHILRAMANI, J.]